

EXHIBIT AD/23  
DATE 2-19-2009  
HB HB 455

Judy Stang  
St. Regis, MT 59866

Subject: HB 455

To Members of the Montana House of Representatives  
Members of the Montana Senate  
Committee Members

Please oppose HB 455, there really is no way you can put a number on a setback for these rivers. All riverbanks are different; all counties have a different terrain, structure and amount of land that follows each riverbank, some low bank, others high bank, plus each bank may have different vegetation that needs to be controlled from erosion. Some County subdivision regulations and planning boards already have established setbacks that they can follow. All counties have the ability to establish setbacks through their subdivision regulations. LOCAL public input, through a hearing process according to statute can establish these setbacks. County and State Regulations also already have regulations for building in flood planes. Each county may have a different set back and a different situation that establishes their particular setback.

In Mineral County we have some river lots that are only 150 feet deep. Would their property be worthless? A lot of the subdivisions have been designed and approved with septs toward the back of the lot, with homes closer to the river. If you build close to the river with in an established setback, you must get a permit from the conservation districts. In fact in Mineral County almost all of the private land follows the river, it would be a hardship on their tax base if you imposed this bill. Please oppose this bill and let the setbacks be set by local public input from each county. There is just too much diversity from county to county to have the state regulate the setback. It would be a bureaucratic nightmare to have an established number of feet, set by a statute for counties. Each county, whether popular or not, needs to go through their own public process and establish their own setback requirements. Please do not expect this to be done from Helena.

Thanks for your consideration  
Judy Stang  
(Former Mineral County Commissioner)  
406-822-2316

February 19, 2009

Hearing:  
House Local Government Committee  
House Bill 455 – Big Sky Rivers Act

Dear Madam Chair and Members of the Committee,

Please allow me to express my **OPPOSITION to HB 455**. There are several important reasons that my colleagues in the development industry oppose this bill:

- It would add complication, time, and costs to development.
- It will lead to costly lawsuits.
- In these economic times we need to support development and growth, for jobs, sales of goods, and a strong tax base.
- The building and development industries are the third largest business sector in Missoula and many parts of the state. It needs to remain vital to ensure local economic prosperity.
- We need to make it easier for those that can create and sustain jobs to move forward with their projects.
- People have a right to use their land as they see fit, as long as it does not create unreasonable risk and burden on the rest of the population.
- This bill would render many parcels useless, and may constitute a taking.

We can do good and responsible development in and near environmentally sensitive areas. Let's be part of the "stimulus package" and help our great State of Montana a little ourselves by allowing good development to occur in areas that are already protected by a myriad of regulations.

The Subdivision, zoning, floodplain, and environmental regulations already protect what needs to be protected. The process is already burdensome and expensive. Let's contribute to the economy, the simplification of development rules, and affordability of housing by keeping the regulations simple, clear, and less restrictive.

Thank you for your time and consideration. Please **OPPOSE HB 455**.

Best regards,

**Mark Landkammer**

Planner

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February 18, 2009

To: House Local Government  
Hearing, Feb 19, 2009

RE: HB455

EXHIBIT AD/23  
DATE 2-19-09  
HB HB 455

To Whom It May Concern;

The Missoula Organization of REALTORS® (MOR) Government Affairs Committee would like to express our opposition to HB455, the Big Sky Rivers Act. It has long been our belief that this type of regulation needs to be imposed on a local level in order to both adequately protect our stream sides while still preserving private property rights.

MOR has many concerns with HB455. One of these items is that no effort has been made to work with the industries and property owners that would be affected most by this type of regulation. Throughout 2008, our association has been working towards the adoption of local streamside protection regulations. We have hosted and participated in multiple meetings with Missoula's Rural Initiatives as well as the Clark Fork Coalition in an effort to create local regulations that make sense. In consideration of the efforts made by those in our county and others, it is unfortunate that concepts which resulted from these types of conversations were not included in the creation of the Big Sky Rivers Act.

We agree that the protection of our stream sides is important, but HB455 does nothing to address one of the major contributors to bank erosion and water pollution: Agriculture. While MOR does not diminish the potential impacts of growth on stream banks, without acknowledging the impact of agriculture on stream sides, this measure only serves to solve a small piece of the puzzle. The issue is a complicated one and the Big Sky River's Act serves to over-simplify the big issue and inadequately deals with the issue.

The basic concept of what streamside protection regulations should be is simple. They should be local so that differences in topography, stream flow, and type of use can be addressed adequately. They should minimize the impacts to private property rights while still maintaining an acceptable level of protection to both homes and the environment. Finally, they should be scientifically based to accomplish the goals of our great state.

I have included the MOR Streamside Protection Policy Statement for your review and encourage you to oppose HB455.

Sincerely,

Perry Deschamps  
Chair, Government Affairs Committee



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## **Streamside Protection Policy Statement**

### **General Beliefs**

- ✓ Streamside Protection should be a local regulation, not state-wide
- ✓ It is important to protect both the environment and property from stream erosion
- ✓ Setbacks are not intended purely for protection of view shed
- ✓ Outreach and education will have to be a substantial part of this process
- ✓ Development of Streamside Protection regulations should start with a clearly defined purpose and all subsequent regulations tie directly into that purpose

### **Points of Recognition**

- ✓ The majority of Missoula County's streams cross lands owned by BLM, Plum Creek, and the Forest Service. These streamside protection regulations will not protect those lands from continued use 1) Logging, 2) Grazing
- ✓ Agricultural uses, including grazing, often negatively affect streams more than development. We say this not to diminish the impacts of development, but to be aware that these streamside protection regulations will solve only a small piece of the overall issue.
- ✓ Regulations should include reduced setbacks allowing urban settlement in established communities that front rivers and streams. Offering a solution such as graduated regulations based on urban level communities would be beneficial to both our streams and communities.
- ✓ It will be important to consider public access to Missoula County's rivers and streams; whether it be developed access points such as resorts or publicly maintained areas. It would be beneficial to note regulations used for developments on lakes when developing them for streams and rivers.
- ✓ A clear understanding of how the regulations will be enforced and financed will be necessary. Any fees associated with development along our streams and rivers should not be so large as to act as a deterrent to development.

### **Goals for Streamside Protection Regulations**

1. Even at the county level one-size-fits-all does not make sense.
  - i. Need a combination of horizontal and vertical setbacks

- ii. Channel migration maps should be utilized to determine setbacks based on reasonable forecasting of channel migration. Determination should respect both the private property rights of the landowner and possible environmental impacts.
  - iii. All streams in Missoula County that are in developable areas should be mapped.
- 2. There should be an opportunity for a site-specific review. Perhaps a "Planned Exception" based on scientific data for justifying a smaller setback.
- 3. Setbacks developed for the sole purpose of protecting the stream and/or property.
  - i. Not a tool to protect view shed
- 4. Indigenous plants and a natural vegetative buffer should be preserved to protect the integrity of the bank.
  - i. The protection should not follow the riparian definition as traditionally used in subdivision, but simply provide a vegetative buffer for the stream
  - ii. Where a threat to a vegetative buffer is not a concern (granite cliff), a "Planned Exception" could occur with scientific proof.
    - ie: Setbacks are 100 feet from midsize stream up to 10 feet in elevation, above 10 feet in elevation setbacks are 50 feet. However if home site is on a granite cliff and you can show proof (soil data, geologist, ecologist, etc) that being closer would not negatively impact the ecology of the stream or the safety of the home then you could reduce the setback.